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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-455

RALPH NADER, *Petitioner*

v.

ALLEGHENY AIRLINES, INC., *Respondent*

On Writ of Certiorari from the United States Court of Appeals for the District of Columbia Circuit

BRIEF AMICUS CURIAE OF THE AIR TRANSPORT ASSOCIATION OF AMERICA ON BEHALF OF:

Alaska Airlines, Inc.
American Airlines, Inc.
Braniff Airways, Inc.
Continental Air Lines, Inc.
Delta Air Lines, Inc.
Eastern Air Lines, Inc.
Frontier Airlines, Inc.
Hughes Airwest
National Airlines, Inc.
North Central Airlines, Inc.
Northwest Airlines, Inc.
Ozark Air Lines, Inc.
Pan American World Airways, Inc.
Piedmont Aviation, Inc.
Southern Airways, Inc.
Texas International Airlines, Inc.
Trans World Airlines, Inc.
United Air Lines, Inc.
Western Air Lines, Inc.
Wien Air Alaska, Inc.

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COMES NOW, the

Air Transport Association of America on behalf of Alaska Airlines, Inc., American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., Frontier Airlines, Inc., Hughes Airwest, National Airlines, Inc., North Central Airlines, Inc., Northwest Airlines, Inc., Ozark Air Lines, Inc., Pan American World Airways, Inc., Piedmont Aviation, Inc., Southern Airways, Inc., Texas International Airlines, Inc., Trans World Airlines, Inc., United Air Lines, Inc., Western Air Lines, Inc., and Wien Air Alaska, Inc., pursuant to Rule 42(2) of this Court, and hereby respectfully files the attached brief amicus curiae on behalf of Petitioner, Allegheny Airlines, Inc.

Written consent to the filing of such brief has been received from both parties. Copies of their consents have been filed with the Court.

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BRIEF AMICUS CURIAE OF THE AIR TRANSPORT ASSOCIATION OF AMERICA

PROCEEDINGS BELOW

This case was tried in the U.S. District Court for the District of Columbia. The opinion of the trial judge is reported at *Nader* v. *Allegheny*, 365 F. Supp. 128, (D.D.C. 1973).

The appeal was heard in the US. Court of Appeals for the District of Columbia Circuit. The opinions

of that court are reported at *Nader* v. *Allegheny,* 512 F.2d 527 (D.C. Cir. 1975).

A request for rehearing *en banc* was suggested by Ralph Nader and the Connecticut Citizen Action Group. On June 23, 1975, the Court unanimously ordered that the request for rehearing *en banc* be denied.

Ralph Nader petitioned the Supreme Court of the United States for a writ of certiorari. The writ was granted on November 11, 1975.

INTEREST OF AMICUS CURIAE

The air carriers filing this brief, *amicus curiae,* are all U.S. federally certificated scheduled route carriers. All of the federally certificated scheduled route carriers accept advanced reservations; all are subject to the CAB regulations concerning denied boarding compensation (14 CFR 250 §§ 250.1 *et seq.,* (rev'd 1975)); all have established priority rules and criteria for determining which passengers shall be denied boarding on an oversold flight and filed such criteria with the CAB; and all have experienced overbooked and oversold flights.

Judge Richey, in his Conclusions of Law, determined that the defendant, "to deter others from such conduct," was "liable to both plaintiffs for punitive damages for their misrepresentation. [Further], although the proven damages are a nominal sum, the plaintiffs may recover punitive damages." (365 F. Supp. 128 at 133).

Thus, although it is clear that the judge knew that overbooking and overselling occur on an industry-wide basis, he was either unaware of the long regulatory history behind reservations practices and procedures or chose to ignore it.

The Court of Appeals, on the other hand, observed that the problems of overbooking ". . . are as wide as the industry itself. . ." and that "industry-wide resolution is appropriate. . . ." (512 F.2d 527 at 544). We agree with this assessment of the overbooking problem.

We do not take a position on the question of the compensatory damages which may be justified in this instance. Nor do we take the position that provable compensatory damages may not be awarded in appropriate cases. However, we do take the position that this is a contract case, not a tort case, and damages, if any, cannot include a punitive award to "deter others." We are the "others" and we submit that the regulatory agency which is deeply involved in this subject has and should continue to regulate air transportation problems such as overbooking in the public interest.

QUESTIONS OF FACT AND LAW WHICH HAVE NOT BEEN AND WILL PROBABLY NOT BE ADEQUATELY PRESENTED BY THE PARTIES

The issue, as presented to this Court by the Petitioner, assumes the existence of fraudulent misrepresentation and is intended to progress the Petitioner toward his ultimate goal of punitive damages. Consequently, Amicus believes that the following questions of fact and law have not been, and there is reason to believe they will not be, adequately presented in the briefs of the parties.

1. Responsible overbooking and the possibility of limited overselling are contemplated by the Civil Aeronautics Board approved system of denied boarding compensation as being in the

public interest and therefore do not constitute fraudulent misrepresentation.

2. Where responsible capacity management exists under a system found by the appropriate government regulatory agency to be in the public interest private action resulting in punitive damages would be totally inappropriate.

The questions of law and fact which Amicus desires to brief are extremely relevant to the issues in this case, especially the situation created by the fact that the Civil Aeronautics Board since 1946 has examined airline reservation practices and in 1967 promulgated specific economic regulations concerning these practices.

STATEMENT OF THE CASE

A. The Facts

In this case, here before the Court on a writ of certiorari, Ralph Nader (Nader) held a reservation on an Allegheny Airlines (Allegheny) flight which was overbooked by the carrier. At the time the flight was scheduled to operate, Nader, having arrived 10 minutes prior to departure, was not able to board the aircraft because it was full. Therefore, he was an oversold passenger.

Nader was offered an alternate flight by Allegheny which would have placed him at his destination fifty-five minutes later than his original arrival time. He refused this flight and requested that the carrier's ramp agent determine whether standbys had boarded or whether anyone would voluntarily give his space to Nader. The agent, who testified that he was following usual Allegheny approved procedures, refused to do this. As a result, Nader took an Eastern Air Lines flight to Boston and from there travelled by car to his

destination. He did not reach his destinations, Hartford and later Storrs, Connecticut, in time to address the Connecticut Citizen Action Group (CCAG) gathering.

The sponsors of the fund-raising rally Nader was to address, Connecticut Citizen Action Group, filed as joint plaintiffs in the case, alleging reliance on Allegheny Airlines to transport Nader on time. As a result, CCAG alleged it was discredited as an affective environmental organization, particularly in view of the fact that CCAG was founded by Nader. In addition, CCAG alleged it lost possible monetary contributions from possible rally participants.

B. Opinion of the Trial Court

In an opinion written by Judge Charles R. Richey, the District Court found that Allegheny has a practice of systematically overbooking; that the carrier's overbooking is substantial; that the carrier is aware that there are oversales resulting from the overbooking practice; and, that oversales result in distress and financial loss to persons relying on confirmed reservations. Judge Richey noted that Allegheny did not notify the public in its advertising of its overbooking practice, or, the risk of oversale and consequently found that Allegheny intentionally conceals its overbooking practice.

Judge Richey acknowledged the existence of the Civil Aeronautics Board's denied boarding rules (14 CFR 250 §§ 250.1 *et seq.*, (rev'd 1975)); but, he concluded that the Board gave to the passenger the option of receiving compensation or going to court. In briefly discussing this point, Judge Richey stated that the CAB ". . . has not attempted to directly regulate the reservations practices of Allegheny or any other air-

line. . . ." (365 F. Supp. 128 at 131). In this connection Judge Richey found that, "the public [is not] advised in detail of the over-booking practice in the tariffs filed with the CAB or of the fact that all members of the Air Transport Association, of which the Defendant is a member, intentionally sell more tickets than they have seats for their particular flights. . . ." (365 F. Supp. 128 at 131).

In awarding damages to Nader, Judge Richey ruled that the claim for damages in this case arose out of the Carrier's "discrimination, fraudulent misrepresentation and intentional tortious conduct." (365 F. Supp. 128 at 132). He found concealment of the overbooking practice, and Allegheny's failure to take steps to avoid injury to Plaintiff Nader "is tantamount to willful and wanton misconduct which gives rise to and provides a proper basis for each of the Plaintiffs' claims for damages." (365 F. Supp. 128 at 132).

Thus, it was the view of Judge Richey that Nader was entitled to compensatory ($10.00) and punitive damages ($25,000.00). As for CCAG, the Judge found that Allegheny, as a common carrier, should have foreseen that other members of the public would rely on its representation to honor reservations. Consequently, he awarded CCAG $51.00 in nominal damages and $25,000.00 in punitive damages. Judge Richey awarded the punitive damages to punish Allegheny and "to deter others" from conduct which he, apparently, found to be "outrageous." (365 F. Supp. at 133).

C. Opinion of the Court of Appeals

Judges Fahy, McGowan and Tamm heard the appeal of this case in the U. S. Court of Appeals for the District of Columbia Circuit. All three judges agreed

that the Connecticut Citizen Action Group is not within a class which could recover. All three judges agreed that punitive damages may not be awarded on the present record under Section 404(b), (49 U.S.C. 1374 (b)) of the Federal Aviation Act. All three judges agreed that the question of whether or not Nader is entitled to recover under Section 404(b) of the Act requires further consideration. Judges McGowan and Tamm concluded that:

> . . . . since the problems are as wide as the industry itself, a single industry-wide resolution is appropriate. Thus, in the absence of an existing Board decision disposing of this question, the issue of whether the air carriers' overbooking policies, including their policy of nondisclosure, may be characterized as a tortious misrepresentation must first be submitted to the Board to ascertain whether the conduct violates section 411. . . . . (512 F. 2d 527 at 544).

Judge Fahy dissented. He was of the view that ". . . the finding by the District Court of fraudulent misrepresentation is ripe for review now by this court without reference to the Board, under section 411, of the reservations practices of the airlines." (512 F. 2d 527 at 552). Again, Judge Fahy stated at the end of his dissent:

> . . . I respectfully dissent from that part of the decision of the court which defers decision of the Nader claim of fraudulent misrepresentation to await Board determination whether the reservation practices of the airlines' are deceptive. . . . (512 F. 2d 527 at 556).

SUMMARY OF ARGUMENT

A. History and Background of Overbooking and Oversales

We believe that the Court of Appeals recognized the need for consideration by the CAB because of the long history of the Board's continued involvement in this issue, because the Board has the expertise in the field, and because of the fact that the practice of overbooking is common to many of the nation's air carriers regulated by the Board. The Court of Appeals was of the view that the Congress had given the CAB the responsibility to regulate overbooking and the statutory power to carry out those responsibilities. Further,

> . . . as the Board has had occasion to point out in detail, in the broad area of air carrier reservations practices and procedures it is not confined narrowly to the tariff provisions of the Act but may use its ample rulemaking authority, . . . to promulgate regulations required in the public interest. (*Emergency Reservations Practices Investigation*-Docket 26253, Initial Decision of Robert L. Park, Associate Chief Administrative Law Judge, Civil Aeronautics Board, at 54 (June 10, 1974) (hereinafter referred to as *Emergency Reservations Practices Investigation*)).

Thus, the Court of Appeals felt that:

> . . . this power must be read broadly to include the approval in the public interest of some practices that might be considered common law misrepresentations. The effect of such approval, or a holding that they do not represent deceptive practices, would be to establish that the practices as a matter of law, do not constitute common law misrepresentations. (512 F.2d 527 at 543).

To this view the Court footnoted a reminder that final decisions of the CAB are subject to review by the Court

of Appeals (Federal Aviation Act of 1958, § 1006, 49 U.S.C. 1486).

In support of maintaining the CAB's control over this matter, we believe it would be helpful to recite some of the history and background of overbooking and oversales for consideration by this honorable Court. Indeed, the Court of Appeals stated that ". . . this background becomes especially relevant in considering the misrepresentation issue." (512 F.2d 527 at 537).

A sharp distinction exists between overbooking and overselling airline flights. Whether done knowingly on the basis of a flight's historical performance, or inadvertently, overbooking is a condition which exists prior to the date and time of a flight departure. Conscious pre-departure overbooking recognizes the fact that within the last 24 to 48 hours before scheduled flight departure there is a substantial turnover in reservations on most flights, and that a substantial number of "no-shows" materialize at the last minute. Overselling, by contrast, results only in those instances when, at the time of departure, the reservations turnovers and the number of "no-shows" have not produced enough seats to accommodate all booked passengers. Actual oversale conditions are relatively few in number, in comparison to the vast number of passengers who are accommodated daily. The airline industry takes care to monitor its various flights and to do all technologically possible and economically feasible to avoid actual oversales.

Thus, we believe it is important to understand the nature of airline practices with regard to overbooking. "The successful growth and development of air transportation has been aided in significant measure by the flexibility of the industry's reservations practices and procedures which make airline services easily available to the public." (*Emergency Reservations Practices*

Investigation, at 8). The reservations system is not one where the airlines indiscriminately sell more seats than are available on all flights and then hope for the best. Overbooking is one feature of a comprehensive program of flight-by-flight capacity management, involving underbooking as well as overbooking, which airlines undertake in an effort to accommodate the maximum number of passengers with a minimum amount of inconvenience.

Generally, such capacity management programs involve the daily review of systemwide flight bookings by a highly trained and experienced team of senior airline reservations personnel. These capacity management teams have access to the most complete information that airline computers can provide. Such information will reflect the historical relationship of actual traffic to bookings on the same or comparable flights, in the same direction, between the same city pairs, at the same time of day, and on the same day of the week. Such data is available on a flight-by-flight basis for the same date a year earlier, or for the most recent week or month. Typically, the date will indicate that certain flights or flight segments historically have a relatively constant pattern of "no show" passengers while others do not. For each segment where "no-shows" can be anticipated on a regular basis, the capacity management team may decide to accept a certain number of reservations in excess of capacity. The number of such "overbookings" is fixed in relation to "no-show" ratios indicated by experience, but generally this is performed with a margin for error aimed at minimizing the risk of actual oversales.

> The carriers themselves have taken a number of steps designed to combat and minimize the no-show. These include (1) 'firming' space critical flights by contact with passengers holding reservations to assure that their space will be utilized; (2) computerized 'dupe' checks to identify and seek to eliminate multiple reservations; (3) performing manifest check-in or post-departure reconciliation procedures for at least selected heavily booked flights; and (4) canceling down-line reservations of known no-shows. Not infrequently, carriers undertake to impose times of ticket pickup and airport check-in in advance of scheduled departure, but rarely does non-observance of these requirements result in cancellation of space. (*Emergency Resevations Practices Investigation*, at 10).

The decision as to how many reservations to accept is usually first made several weeks before a flight is scheduled to depart. It is thereafter reviewed regularly until just before the flight. Actual bookings, cancellations and ticket pickups are examined and measured against the forecast. The number of seats available for sale is then adjusted to take account of this new information. At certain peak times, extra sections may be added. In any case, as the date of a flight approaches and more information becomes available, the ability to project actual traffic in relation to bookings improves. While the final decisions as to how many bookings to accept are far from perfect, they are as accurate as computer technology and experienced judgment can determine. More important, the practice of making these judgments means that literally millions of airline seats are sold and used each year by persons who otherwise would be needlessly denied space. "If the thought is that there has been substantial aggravation of the denied boarding problem in recent years, such facts as are available indicate the contrary." (*Emergency Reservations Practices Investigation,* at 4).

The same procedures which allow bookings in excess of seats sometimes dictate underbookings. This can

occur for many reasons, particularly where tickets are written by agents or personnel of other airlines. Domestic flights which tend to carry a high proportion of international connecting passengers are an example. Whatever the reason, slower communications, clerical errors compounded by language differences or inadvertent error at the foreign point of origination, the domestic carrier may find itself regularly confronted with more passengers than its records indicate. In such cases, reservations are limited to fewer seats than the capacity of the airplane. Underbookings may also occur where a carrier anticipates that for some reason, such as anticipated high temperatures, shortened takeoff distances as a result of runway construction, extra fuel loads, or other payload restrictions, full occupancy of the airplane will not be possible.

It should be emphasized that the vast majority of flights are neither underbooked nor overbooked. These are the instances where experience indicates that the carriers' reservations records are on the average a reasonably accurate indication of actual traffic. Here too, however, the decision not to overbook or underbook is reviewed constantly in light of actual experience. "Moreover, no known serious abuses of or dislocation in the present reservations systems have occurred." (*Emergency Reservations Practices Investigation,* at 39).

There is nothing fraudulent about overbooking procedures. They are a necessary part of airline operations if those operations are to be conducted economically in the public interest. More importantly, the CAB has held public proceedings concerning airline overbooking procedures. For the convenience of the Court we are attaching, as an appendix to this brief, a

chronological history of relevant air carrier and government regulatory actions in connection with reservations procedures which we believe must be considered in any decision in this case. As can be seen from the Appendix, overbooking has had a great deal of careful attention by the CAB over the years.

The causes of overbooking are complex. The airline industry has been plagued from the earliest days of its history with passengers who do not show up to occupy confirmed reserved space whether because they have changed their plans, or, because they have engaged in multiple booking on various flights to accomodate uncertainty as to the time they wish to depart. This situation was first recognized by the carriers shortly after World War II. Unfortunately, the carriers at that same time were experiencing a shortage of capacity. Many passengers created economic problems for the carriers, and serious transportation problems for potential passengers, when they failed to show up for their flights and forced carriers to depart with empty seats. Various approaches have been attempted to resolve this situation; but, it is still an integral part of the nature of the system.

Despite carrier attention to and concern about the overbooking problem, oversales do occur. The record of regulatory attempts to deal with this matter clearly demonstrates that it is a complex problem which requires expert examination and consideration of the public interest and airline economics. (Appendix). The CAB has continuously and expressly maintained jurisdiction over this subject in order to conduct such examinations and render appropriate decisions and should continue to act appropriately.

The language of the CAB in an early notice of proposed rulemaking (EDR-109) dated January 10, 1967, clearly displays its own conclusion that intentional and controlled overbooking practices are in the public interest:

> There is nothing in the substantial body of data before the Board which controverts the carriers' claim that overbooking is not the major cause of oversales. (at 5).
>
> * * *
>
> In our view any realistic appraisal of the practice of overbooking leads to the conclusion that, while it results in oversales, it also contributes to flexibility and freedom in securing, changing and cancelling reservations. Thus, any rigid controls over overbooking, as now practiced, would inevitably lead to restrictions on privileges which contribute greatly to the convenience of air transportation, and have come to be relied upon by the traveling public. In addition such controls would reduce load factors, and the additional cost would ultimately have to be borne by the traveling public.
>
> In light of the above, it can be seen that the present reservations systems of the carriers in general benefit the traveling public. (at 6)..
>
> * * *
>
> It is apparent from the foregoing that the present reservations system of the carriers is designed to provide maximum benefits for the traveling public and to reduce the carriers' reservations costs. (at 9).

In its notice of proposed rulemaking dated June 4, 1973, (EDR-248) the Board, citing prior rulemaking orders, stated:

> The [denied boarding] rules are intended, *inter alia*, (1) to prevent unlawful discrimination or undue or unreasonable prejudice in connection with determining priorities among overbooked passengers, (2) to provide prompt, effective and adequate compensation to passengers denied boarding, and (3) to encourage the carriers to improve their performance with respect to oversales.

As noted by the Court of Appeals (512 F.2d 545 at 546) the CAB has pending before it in Docket 26253 the "*Emergency Reservations Practices Investigation.*" In that *Investigation,* Judge Park, having knowledge that "[a]ll carriers, however, engage in deliberate overbooking—or 'planned capacity management' as it is referred to by some—to help offset the effects of the no-show, late cancellations, and the like. . . .", (*Emergency Reservations Practices Investigation*, at 10) found that ". . . no known serious abuses of or dislocations in the present reservations systems have occurred." (*Emergency Reservations Practices Investigation,* at 39). While Judge Park did say the question of whether or not to prohibit overbooking ". . . was not specifically placed in issue" in the Investigation, he further stated on the same question ". . . nor does the record provide any persuasive basis for wholly outlawing the practice . . ." as was suggested during the *Investigation* by the Nader-directed Aviation Consumer Action Project. (*Emergency Reservations Practices Investigation,* at 27). Indeed, Judge Park, in dealing with the Board's proposal to change denied boarding compensation, found:

> If the public does in fact lack faith and confidence in the present reservations systems it is not evident

from this record. Nor has any cause and effect relationship been demonstrated between the refund penalty, on the one hand, and tripling denied boarding compensation, on the other hand, for a passenger who is a no-show and must pay the penalty cannot be, at the same time, eligible for denied boarding compensation. Without some such causal connection or a substantial element of public distrust the tripling proposal, or a proposal for any increase for that matter, loses all logical support and validity. (*Emergency Reservations Practices Investigation*, at 51).

ARGUMENT

I. Responsible Overbooking and the Possibility of Limited Overselling Are Contemplated by the Civil Aeronautics Board Approved System of Denied Boarding Compensation as Being in the Public Interest and Therefore Do Not Constitute Fraudulent Misrepresentation

The issue before the Court, as framed by the Petitioner, assumes the existence of a fraudulent misrepresentation. The Trial Court made a finding of fraudulent misrepresentation; but, the Court of Appeals stated that ". . . there is absolutely no probative evidence in the record to support a specific finding of an affirmative misrepresentation. . . ." (512 F. 2d at 541) and later stated that ". . . we reverse the finding that Allegheny affirmatively represented to Nader that he had a guaranteed reservation for a seat because it is clearly erroneous and without evidentiary support." (512 F.2d at 542). The Court of Appeals went on to say that the practice of overbooking could be considered to be a "nonrepresentation" rather than a misrepresentation. The Court remanded to the CAB the threshold question of whether or not the practice of overbooking is deceptive. If the practice is not deceptive then it cannot be a common law misrepresentation. (W. Prosser, Law of Torts 713-714 (3rd ed. 1964)).

The Civil Aeronautics Board had the question of whether overbooking is a deceptive practice, or not, before it in the *National Airlines, Inc., Enforcement Proceeding*, 31 CAB 390 (1960). In that proceeding the Board decided that the enforcement case against one carrier was too limited in scope to decide the issue of overbooking. As a result, the Board instituted the *Overbooking Practices of Trunkline Carrier Investigation*, CAB Order E-15615 (1960). As will be evident from a glance at the Appendix we have attached to this brief, the CAB, in the years following the 1960 proceeding, has been deeply involved in the overbooking issue. Since the 1960 proceeding several proposals have been submitted to the Board including a proposal promulgated by the Board itself on October 12, 1965, in Economic Draft Regulation No. 95 (EDR-95) which *inter alia*, would require that carriers give passengers a notice that the flight they wished to take was overbooked, if such were the case. This notice was proposed to be given no later than 12 hours prior to flight time. Such a direct notice would have eliminated any possibility of an allegation of concealment. However, the Board, after due consideration specifically rejected that idea in EDR-109 dated January 10, 1967. The Board concluded (in EDR-109) that the practice of overbooking had ". . . worked reasonably well in the public interest. . . ." This could only lead the nation's air carriers to believe that continuance of the practices had approval by the appropriate government regulatory agency.

Administrative Law Judge Park echoed long standing Board philosophy when he stated that, "while the

carriers are correct in their conclusion that existing carrier rules and practices at issue are not presently unlawful it does not follow that the Board is therefore powerless to adopt a contingent program designed to protect the air transportation system and the travelling public from potential harm." (*Emergency Reservations Practices Investigation,* at 54).

We believe that, whether or not the issue returns to the CAB or goes to the District Court, it is clear that no evidence exists that the practice of overbooking amounts to fraud through misrepresentation or otherwise. On the other hand, the long record of regulatory interest and action on this subject by the CAB is abundant evidence of the government's determination that the practice is in the public interest. Stated another way, the CAB began its inquiry in the *National Airlines, Inc., Enforcement Proceeding,* cited above, on the theory that a particular carrier might have been involved in a deceptive practice. The Board then determined that the practice was not peculiar to a single carrier. Then, after further examination, the Board determined that the practices engaged in were in the public interest. It is generally well recognized that deception is a basic element required to establish a fraudulent practice. We contend, therefore, that since there is no deception in the practices followed, there can be no fraud.

Thus, as stated before, while we take no position on damages under contract theories, we strongly urge the Court to make it clear that this is not a case which can be decided under tort theories. In this connection, we believe it follows that punitive damages would be inappropriate and should not be awarded.

II. Where Responsible Capacity Management Exists Under a System Found by the Appropriate Government Regulatory Agency To Be in the Public Interest Private Action Resulting in Punitive Damages Would Be Totally Inappropriate

As the Court will ascertain from the decisions below and from the brief of the Petitioner, a basic aim of the Petitioner is the award of punitive damages.

Our view that punitive damages cannot properly be awarded is especially relevant when consideration is given to the impact of such an award. In the language of Judge Friendly, "[w]hat strikes one is not merely that these torts [for which punitive damages historically have been awarded] are intentional but that usually there is but a single victim; a punitive recovery by him ends the matter, except for such additional liability as may be provided by the criminal law." (*Roginsky* v. *Richardson-Merrell, Inc.,* 378 F. 2d 832 at 838, (2nd Cir. 1967)). The Judge went on to say that the court had "the gravest difficulty in perceiving how claims for punitive damages in such a multiplicity of actions throughout the nation can be so administered as to avoid overkill." (378 F. 2d 832 at 839).

While the *Roginsky* case involved punitive damages in product liability cases, we believe the same "overkill" that bothered the Court there applies to those cases involving overs[illegible]les of air transportation services. The figures cited by the District Court in this case alone exemplify the very problem which exists here with punitive awards. Finding of Fact No. 12 of the decision states that Allegheny "bumped 945 persons" in April, 1972. Hypothetically, applying the Nader award to all persons oversold by Allegheny from January 1969 through August 1972, it would have cost Alle-

gheny $398,225,000. Such a figure is reached by using the $25,000 awarded to Mr. Nader; if third parties received additional awards, the figure obviously would be substantially higher. For almost the same period (January, 1969 through the third quarter of 1972) Allegheny received approximately $586,789,000 in gross passenger revenues from scheduled flights. This figure is, of course, subject to taxes, operating expenses, etc. Thus, potential damage claims could amount to ⅔ of the gross revenues from passenger transportation on scheduled flights prior to taxes and operating expenses.

We believe these figures as applied to Allegheny clearly demonstrate the "overkill" possibilities which alarmed Judge Friendly. In using the fiscal year 1973 total of 75,925 domestic passengers denied confirmed space (as reported to the CAB), the possible industry exposure was calculated at $1,898,125,000, or approximately two billion dollars. Again this total does not include exposure to third-party claims. It should be noted that, the entire certificated schedule carrier industry took in approximately $9,763,599,000 in fiscal year 1973 in scheduled passengers revenues. From this amount the cost of operating, taxes, and other expenses would result in a figure considerably less than the amount shown as possible industry exposure. Continuing, hypothetically, this would fiscally mandate the demise of a privately owned commercial airline industry.

Certainly not all passengers denied confirmed reserved space would receive a court award of $25,000. Some would make no claim; some would accept the Part 250 (14 CFR 250 §§ 250.1 et seq., (rev'd 1975))

denied boarding compensation; some might be awarded more. The CAB *Investigation* of 1974 determined that, "no real contention much less a showing, has been made that present levels of denied boarding compensation are not compensatory or that they are otherwise inadequate to make the passenger whole, which was the fundamental underlying purpose for enactment of the regulation." (*Emergency Reservations Practices Investigation,* at 51). But clearly, under the District Court opinion, the possibility exists for enormous outlays of money. Further, the CAB's economic regulation

> Part 250 was first enacted in 1967 in an effort to 'provide prompt, efficient and adequate compensation' to passengers who for one reason or another are denied boarding by air carriers. The prescribed level of compensation, which has remained unchanged since enactment of the regulation was considered adequate in a general way to make the passenger 'whole' and to compensate him for the 'inconvenience, distress, and, in many cases, hardship and monetary loss resulting from an oversale'. (*Emergency Reservations Practices Investigation,* at 27-28).

The public policy basis for awarding punitive damages does not exist here.

> The airline passenger has substantial freedom of choice to make reservations at carriers' offices or through agents and to cancel them by telephone or in person. Also, should a ticketed passenger have a change of plans, he is free in most situations to use his ticket on flights of other air carriers without endorsement. A system with such built-in mobility for the passenger inevitably breeds the deliberate no-show who, in times when airline seats are in short supply, will undertake to protect him-

self by making multiple reservations which he is free to disregard with impunity. (*Emergency Reservations Practices Investigation,* at 8-9).

The cases, some of which are cited in the opinion of the District Court (365 F. Supp. at 133), when awarding punitive damages generally do so on a public policy basis.

On the other hand, the CAB found the overbooking practices to exist in the public interest (EDR-109). The public interest cannot be determined in such mutually exclusive ways on the same point. The view of the Board which was created to be the expert in aviation matters, having dealt with this specific subject, must be preferred.

If carriers are forced to drop controlled reservations procedures, empty seats on airplanes will concomitantly greatly increase, causing high losses of revenue to carriers and immeasurable inconvenience to the public. In either event, whether attributable to the rise is costs due to high damage awards, or, a drop in revenues due to unsold seats, there can be no doubt that the consumer would eventually bear the burden if the District Court's decision on punitive damages is allowed to stand. Thus, we submit that a punitive damages award in this type of case is both inappropriate and unwarranted.

If the present procedures of the Board necessitate more restrictive treatment of the carriers, it is for the Civil Aeronautics Board with its expertise to make appropriate changes in existing rules and practices to safeguard the public interest. The Court of Appeals itself stated that "[w]e think that the decision in the *Emergency Reservations Practices Investigation* should substantially resolve whether the practices at

issue are deceptive within the meaning of section 411." (512 F.2d 527 at 546).

In order to prevail, an oversold passenger must establish himself as the target, express or implied, of a willful and outrageous tort. (e.g., see *Fitzgerald* v. *Pan American World Airways, Inc.,* 229 F.2d 499 (2nd Cir. 1956)). We believe that special and wrongful treatment directed at a specific individual should be the only grounds for punitive damages. In our view, this is demonstrably absent in the present situation. The carrier, in the instant case, did not engage in conduct which was knowingly and willfully tortious. The long history of regulatory activities in this area, the monthly CAB public statements showing airline denied boarding statistics, the existence of Part 250, the public distribution of a booklet by the CAB on consumer rights including denied boarding and, especially, the tariffs on denied boarding compensation all stand to refute the allegations of concealment and deception. As previously stated, without deception there cannot be a tort based on misrepresentation and without a tort we fail to see any basis for an award of punitive damages.

In short, we believe the District Court was in error in awarding punitive damages in the case of each plaintiff, and we respectfully urge this Court to uphold the Court of Appeals decision on punitive damages. As stated previously, we take no position on the appropriateness of compensatory damages.

CONCLUSION

The regulatory history on airline overbooking and oversales and the case law surrounding denied boarding by airlines demonstrates that the District Court's decision with respect to the punitive damages awards in

this case must not be allowed to stand and the decision of the Court of Appeals on the matter of punitive damages must be affirmed. This does not mean that any right of action must be eliminated; but, it does mean that the right of action, if pursued, must not result in a windfall.

Clearly, the remedy for an individual who has an oversale claim is the right to accept denied boarding compensation, or substituted service under the CAB regulations, or to sue in court for actual or compensatory damages incurred through the breach of contract. It follows from this that those not directly involved in the contractual relationship do not have a claim absent an extraordinary showing by such a plaintiff that the contracting parties (including specifically the carrier) contemplated that the transportation was being afforded for the benefit of a third party.

Programmed overbooking by carriers, in the public interest, is contemplated by the appropriate agency in charge of regulating airline practices and procedures. This proposition was most recently accepted by the House of Lords in *British Airways Board* v. *Taylor,* (*The Times* (London), December 11, 1975, at 5) decided on December 10, 1975, which held that:

> Their Lordships were not concerned with whether that policy (overbooking and overselling) was commercially sound or unsound, fair or unfair to passengers generally, operated conscientiously or otherwise. Such questions were primarily within the control of administrative authorities, the Civil Aviation Authority, or the Secretary of State in this country, and similar bodies elsewhere.

The Civil Aeronautics Board is clearly the sort of "similar body" to which the House of Lords referred.*

Respectfully submitted,

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* It should be noted here that England, unlike the United States, does not have a rule or regulation requiring the filing of tariffs which incorporates a predetermined system of denied boarding compensation.

APPENDIX

APPENDIX

Background of C.A.B. and Carrier Actions Concerning Reservations Practices

Date	CAB Order/ CAB Reports	Description
8/25/46		Tariff filings by all U.S. domestic airlines, except Colonial, aimed at eliminating "no-show" problems, comprising (1) necessity of a ticket for a confirmed reservation (2) necessity of reconfirmation.
10/15/46		Second phase of industry procedures to combat "no-show" problems—Tariff rule initiating "no-show" penalty of 25% or $2.50 whichever was greater—Tariff terminated 8/10/47.
3/14/54		Tariff rule filings by U.S. domestic air carriers initiating "no-show" penalty of $5.00 or 20%, whichever was greater, applicable to tourist class only. Passengers under this rule could cancel up to 3 hours prior to departure. Rule terminated 10/15/55.
4/29/55	E 9164	CAB authorized discussions by carriers concerning proposals to cope with the "no-show" and multiple reservations problems.
8/17/56	E 10545	Approval of ATC resolution to adopt "Phase I" regarding "no-shows" and multiple reservations and that carriers had tentatively reached an agreement on the assessment of penalties for late cancellation of reservations and for "no-shows". Allowed further discussion on "Phase II", the penalty portion of the subject.
2/6/57	E 11007	Extended time period for discussions. In this order the Board notes its concern that such discussions could lead to a request for fare increases. It therefore conditioned the discussion authority in order to separate reservations charges from basic travel charges.

Date	CAB Order/ CAB Reports	Description
4/26/57	Dockets 8725, 8726	Complaint of CAB enforcement attorney against Delta Air Lines and Eastern Airlines alleging the practice of overbooking constituted an unfair and deceptive practice and unfair method of competition within the meaning of Section 411 of the Federal Aviation Act and that a self-imposed penalty paid by the carrier to oversold passengers constituted a tariff violation under Section 403 of the Act.
5/13/57	Docket 8761	Complaint of CAB enforcement attorney against National Airlines alleging, *inter alia*, intentional overbooking practices.
8/6/57	E 11658	Approval of ATC agreements (No-Show Control Plan) which, *inter alia*, established a "no-show" penalty. The Board stated " . . . the oversale of space could result from several factors, including overbooking, which the Board earlier informed carriers would constitute a violation of the Act if done deliberately. There are now pending enforcement actions against two carriers which had allegedly engaged in this practice, and the Board intends to take whatever further steps may be appropriate to insulate the public from any such practices as it may find." The Board went on to say " . . . the failure of a passenger to cancel or use reserved seat space poses a serious economic and service problem to both the airlines and all air travelers. Many times a fully-booked flight will take off with empty seats that could be used by other passengers, because prior seat reservations were made by persons who failed to pick up or cancel their reservations. This results in handicapping the economic earning power of the air carrier and in denying air transportation to the public."
12/16/57	E 12025 26 CAB 732	Consent Cease and Desist Order finding Delta had violated Section 403(b) of the Act through refunding or remitting cash settlements and other things of value to oversold delayed or inconvenienced passengers.

Date	CAB Order/ CAB Reports	Description
7/22/58	E 12817	Board approval of ATC agreements which provided for termination of the No-Show Control Plan as of 90 days following the 1958 Spring ATC Meeting but no later than August 1, 1958.
7/26/60	E 14962 30 CAB 862	Termination of enforcement proceeding involving Eastern Air Lines for failure, after hearing, to establish allegations of enforcement complaint and finding that overbookings occurred due to human failure and errors beyond the carrier's control. Decision also states that a rulemaking proceeding will be instituted to determine and define the duty of an air carrier to notify an overbooked passenger upon discovery that its records indicate that the space, at that time, is not available.
8/4/60	E 15614 31 CAB 390	Dismissal of enforcement proceeding against National Airlines insofar as it relates to intentional overbooking admitted by the carrier to have occurred. The Board was of the view that problems of intentional overbooking may more appropriately be explored in an industry-wide investigation.
8/4/60	E 15615	Order instituting investigation of overbooking practices of trunkline carriers. Noting that the *National Enforcement Proceeding* brought before the Board for the first time the practice of intentional overbooking, the Board instituted its investigation " . . . so that it might fairly and adequately assess the conflicting interests and policy considerations involved."
10/11/60	E 15905	Order of investigation of Eastern Airlines local "Air-Bus" fares which incorporated provisions which proscribed a forfeiture of the purchase price of the transportation where a passenger fails to present a ticket for refund at least 24 hours prior to scheduled departure time in order to alleviate problems stemming from "no-show" passengers. Experiment of "Air-Bus" allowed to proceed.

Date	CAB Order/ CAB Reports	Description
4/27/61	E 16729 33 CAB 1033	Dismissal of complaint against Eastern "Air-Bus" fares and dismissal of investigation ordered on 10/11/60 in E 15905. Institution of investigation of voluntary refund rules incorporated in carrier's tariff.
9/28/61	E 17515	Order authorizing certificated route carriers to engage in discussions (a) to discuss ways and means of curtailing "no-shows" including the imposition of penalties and (b) to consider problems relating to in-flight services and possible charges thereto.
1/8/62	E 17914	Order tentatively approving an agreement (Reservations Service Charge Plan) of 11 trunkline carriers which agreement imposed the following rules: The passenger must purchase his ticket 24 hours in advance or supply billing information for the collection of any penalty that might be assessed. The penalty imposed was $5.00 or 50%, whichever is greater, to a maximum of $50.00 unless the passenger is able to present documentary evidence of cancellation. To these rules the Board added that denied boarding compensation should be paid in the event of oversales with a minimum of $25.00 or 50% of the applicable one-way fare of the first remaining coupon, whichever is greater. The Board also established that the rules be the subject of a six month experiment. In this order the Board found, *inter alia:* "The Board is cognizant of the inherently complex nature of the reservation and ticketing aspects involved in the sale of air transportation, and of the need to improve further the reservation procedures. The adoption of ticketing time limit standards represents, in the Board's view, a desirable move. The Board was also aware of the long-standing economic and service problem to the airlines and air travelers alike resulting from the failure of ticketed passengers to cancel or use reserved seat space. Thus, a fully booked flight may actually depart with unoccupied seats that could

have been used by other passengers, because prior seat reservations were made by persons who failed to use or cancel their reservations. This problem has resulted in a handicap on the earning power of the air carriers and has often resulted in a denial of available air transportation to the public. For these reasons, the Board believes that reservation and no-show controls are desirable. On the basis of the foregoing, the Board has tentatively concluded that the agreement should be approved subject to the terms and conditions hereinafter set forth and the receipt of comments from interested persons. (p. 3)

"The imposition of a reservations service charge on no-show passengers raises the related question of the procedures which should obtain in any instance where a passenger, who presents himself for carriage at the appropriate time and place, is not transported on a flight that operated and for which he held a proper ticket because of insufficient seats on the aircraft. (footnote omitted)

"The overbooking practices of the trunkline carriers have been the basis for numerous complaints to the Board and on August 4, 1960, by Order E-15614, the Board directed its staff to undertake a comprehensive investigation of this problem. The staff issued a report on July 28, 1961 setting forth its tentative findings and conclusions in the overbooking investigation (*Overbooking Practices of Trunkline Carriers*, Docket 11683). Facts developed in the investigation indicate that substantial overbooking, either inadvertent or intentional, does occur and while the percentage of oversales is not large in relation to the total volume of traffic handled, the number of persons inconvenienced by oversales is not insignificant. Therefore, the Board concludes that any program di-

Date	CAB Order/ CAB Reports	Description
		rected to a resolution of the no-show problem must consider also the oversale aspect of the reservations process and give weight to the carrier's, as well as the passenger's responsibility in confirming a reservation." (pp. 4, 5) (footnote omitted)
3/1/62	E 18064 35 CAB 881	Approval of "Reservations Service Charge Plan" subject to lowered maximum penalties for "no-shows" and denied boarding compensation from $50 to $40. The Board also exempted from the denied boarding compensation requirements those passengers not accommodated (1) because of fuel requirements, equipment substitution, etc., (2) when alternate arrangements provide for arrival of the passenger within 1 hour of his previously planned arrival time, and (3) if the passenger is downgraded or upgraded on the same flight. The Board also required the carriers to report monthly on this program.
4/27/62	E 18268	Order of investigation and suspension of carrier tariffs marked to become effective 5/1/62. The Board stated that it appeared that certain parts of the "No-Show and Oversale Penalty Plan" approved by Order E 18064 might allow a "no-show" passenger to escape penalty and that such a provision might be unjust and unreasonable and that practices of 13 local service carriers and helicopter carriers which varied from the trunkline plan might result in unjust discrimination or an undue preference and prejudice.
5/25/64	E 20859	Order deferring *Investigation of Overbooking Practices of Trunkline Carriers* which was instituted by Order E 15615 on 8/4/60, dismissing the "Reservations Service Charge Plan" of 11 carriers approved by Order E 18064 on 3/1/62 which expired by its own terms. This order required carriers to file monthly denied boarding compensation reports with respect to tariff rules filed by the carriers providing for the pay-

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Date	CAB Order/ CAB Reports	Description
		ment of such compensation for the carrier's failure to provide confirmed reserved space. The Board stated:

> "We do not propose, at this time, to take further procedural steps in the *Overbooking Practices of Trunkline Carriers Investigation,* Docket 11683, but we shall consider, in a separate rule making proceeding, the issuance of a rule prescribing the minimum obligation of the carriers to give notice to passengers of an overbooked condition at a reasonably practicable time prior to scheduled flight departure. We have noted the extensive information supplied by the carriers with respect to their practices in dealing with overbookings, notice to passengers of such situations and the priority procedures observed by them when oversales result at flight departure time. While the carriers all accept the obligation to advise passengers of overbooked conditions at some time prior to departure, the procedures for giving notice are not regularized, uniform or publicly available. In the rule making proceeding which shall be instituted promptly, we will broaden our consideration to include all scheduled carriers (excluding helicopter operators)." (p. 3)

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The Board went on to state:

> "Additionally, we expect all carrier parties to adopt, in the immediate future, appropriate procedures designed to fully inform the traveling public of the provisions of the denied boarding compensation tariff, including but not limited to the following:
>
> (a) The specific terms and amount of compensation;
>
> (b) The specific exceptions thereto:

Date	CAB Order/ CAB Reports	Description
		(c) A clear statement to the effect that the passenger is under no obligation to accept the proferred compensation in lieu of any present or future claim against the carrier.
		In this connection, we are directing each carrier party to submit for this record within 30 days of the issuance of this order, a detailed statement of the steps taken to acquaint the public with the basic features of the denied boarding compensation obligation of such carrier. Further, the carriers will be required to submit for the record any modifications in their notice procedures, within 30 days of implementation." (pp. 3, 4)
		Finally, the Board said:
		"... we wish to make it clear that our decision to defer does not signify in any way sanction of overbooking or overselling practices. The option of the Board to take further action in the Overbooking investigation at any time such action is warranted should be clearly noted." (p. 4)
8/13/64	E 21187	Order amending Order E 20859 and denying reconsideration. In this order the Board stated:
		"We recognize also that in terms of percent of total passengers handled, the number denied confirmed space is relatively insignificant, being only a fraction of 1%. However, the application of even this small factor to the total domestic enplanements would reflect that a considerable number of passengers are being inconvenienced. (footnote omitted) We believe that this number is

Date	CAB Order/ CAB Reports	Description
		sufficient to require that an effort be made to find a remedy." (p. 3)
		The Board also acknowledged that the count of the number of times a passenger is counted as being denied confirmed space is and should continue to contain duplications of statistical reporting.
10/12/65	EDR-95	By a notice of proposed rulemaking the Board proposed to require carriers to file tariffs establishing priorities for the removal or refusal of passengers in the event of oversales. It also proposed that carriers be required to give reasonable notice to passengers of overbooked conditions and, to that end, suggested a time period for such notice of no later than 12 hours prior to flight time.
12/14/66	E 24516	Approved Air Traffic Conference of America agreements "... designed primarily to reduce the number of 'no-show' passengers, and to minimize the possibility of selling more space than is available on particular flights, resulting in passengers with reserve space being denied boarding."
		The Board stated:
		"The agreements represent an effort to strengthen the carriers' reservations procedures on an industry-wide basis and to provide for a continuing review of results. The objectives of these procedures are noteworthy and are in keeping with the spirit and intent of earlier pronouncements by the Board on such matters. The agreements, therefore, merit approval."

Date	CAB Order/ CAB Reports	Description
1/10/67	EDR-109	In a notice of proposed rulemaking, after finding that existing compensation provided in carrier tariff was inadequate, the Board proposed to require the carriers to file tariffs on denied boarding compensation at the rate of 200% of the value of the first remaining flight coupon with a $50.00 minimum and a $200.00 maximum. The Board found, *inter alia*, that the 12 hour rule proposed by EDR-95 would require substantial changes in carrier reservations practices and carrier systems and stated it was " . . . not prepared to require such changes in a system which has, on balance, worked reasonably well in the public interest. . . . " The Board noted that EDR-95 was directed toward the practice of deliberate or controlled overbooking. The Board proposed that carriers be required to furnish oversold passengers with a statement of the terms, conditions and limitations of denied boarding compensation. It also proposed that the carriers establish priority rules for determining who shall be denied boarding on an oversold flight and that such rules must not result in unjust discrimination or undue or unreasonable prejudice or disadvantage to persons. The Board was of the view that carrier flexibility on establishing priority rules should not be disturbed. Finally, the proposed rulemaking would require monthly reports so that the Board could monitor the practices and procedures and make adjustments where necessary.
8/3/67	ER-503	Enactment of Part 250 of the Board's Economic Regulations (14 CFR 250) to become effective 10/17/67. This regulation required the following: (a) Denied boarding compensation to be paid at the rate of 100% of the first remaining coupon. (b) $25 minimum $200 maximum.

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Date	CAB Order/ CAB Reports	Description
		(c) Establishment of priority rules and criteria for determining which passengers holding confirmed reserved space shall be denied boarding on an oversold flight and that such rules must be filed with the Board. In addition the rules and criteria shall not make, give or cause any undue or unreasonable preference or advantage to any particular person or subject any particular person to any unjust discrimination, etc. (14 CFR 205.3). (d) Establishment of certain exemptions from the denied boarding compensation rules under certain conditions. (e) Required monthly result reports be filed. Note: Part 250 has been amended on occasion: *ER-588* effective 10/10/69 concerning alternate transportation provided passengers denied boarding. This rule allowed passengers an option of receiving compensation or alternate transportation when available and offered. *ER-681* effective 5/18/71 requiring public disclosure of international operations. *ER-727* effective 4/7/72 regarding administrative details concerning filings. *ER-804* effective 8/6/73 applying the denied boarding rules to confirmation of reserved space not only as shown on a passenger's ticket but by any other means of confirmation provided for in a carrier's tariff including oral confirmations. *ER-827* effective 9/11/73 expanding the applicability of the denied boarding rules to intra-Alaskan operations.

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Date	CAB Order/ CAB Reports	Description
8/23/67	E 25583	Order dismissing complaint of Warren Paul Murray against Ozark Air Lines. Murray, an overbooked, oversold passenger had alleged that the carrier failed to offer denied boarding compensation at the time and place of the oversale. He sought compensatory and punitive damages and other redress. The claims were uncontested, but the carrier alleged it had remitted compensation to the complainant which was refused. Ozark also alleged it had a policy against overbooking and that the oversale was the result of a mistake by its employees. After noting it had no authority to grant damages the Board stated that a single denied boarding incident did not warrant an enforcement complaint. It also cited its intention to consider the oversales problem "on an industry-wide basis in an effort to reach an overall solution." (EDR-109 and ER-503)
9/6/67	E 25635	Order approving an intercarrier agreement in which the Board allowed establishment of a task force to establish and coordinate technical, financial, marketing, communications and legal subcommittees to evaluate and make recommendations on a common automated reservations system. The Board stated: " . . . we believe that such a common system may tend to reduce the incidence of oversales with resulting denied boardings. . . . " (Terminated by Order 71-11-90 dated 11/24/71 due to antitrust problems involved)
6/19/70	70-6-114	Stipulation of facts and consent to the issuance of a cease and desist order entered into by Trans Caribbean Airways, Inc. in settlement of alleged violations—failure to provide passengers with notices required under Part 250.

Date	CAB Order/ CAB Reports	Description
6/24/71	71-6-120	Order dismissing complaints against conditional reservation rule proposed by Eastern Air Lines. The Board stated: "The no-show problem is essentially an industry problem, and it would be most desirable in our opinion that it be dealt with on a uniform basis." The Board went on to indicate industry-wide discussion authority would be granted if the carriers so wished.
7/19/71	71-7-99	Order authorizing discussions of Eastern Air Lines' conditional reservation rule and all possible alternative plans for attacking the no-show and related overbooking problem. The Board stated: " . . . A resolution of the no-show problem throughout the industry should also tend to reduce the number of denied boardings to passengers holding confirmed space." A meeting was held on September 15, 1971 pursuant to this Order but no agreement was reached.
7/13/72	72-7-42	Stipulation of facts and consent to the issuance of a cease and desist order entered into by Trans World Airlines for the purpose of settling an informal charge that the carriers violated the denied boarding regulations by failing to distribute information regarding payment of compensation. The Board accepted $87,000 as a compromise of any penalties which might be imposed.
6/4/73	EDR-248	Notice of proposed rulemaking amending Part 250 to include foreign air carriers. The Board reiterated that the rules were for the purpose, *inter alia*, of preventing unlawful discrimination or undue or unreasonable prejudice in connection with determining priorities among overbooked passengers and to provide "prompt, effective and adequate compensation" to passengers denied boarding.

Date	CAB Order/ CAB Reports	Description
8/1/73	73-8-1	Order rejecting proposed tariff by Western Air Lines, Inc. which would have compensated passengers for failure to provide advertised features of first-class services. Among other things the Board noted that: "... Denied-boarding compensation is tied to a very specific and readily identifiable occurrence—failure to accommodate the passenger on a flight for which he has a reservation. Moreover, the amount of compensation bears a reasonable relationship to that which the passenger has not been furnished—the dollar value of the air transportation."
12/21/73	73-12-93	Order instituting investigation; tentative findings and conclusions; notice of proposed rulemaking. This order tentatively found and concluded that airline tariffs which did not contain reservations and ticketing rules *set out by the Board* in the order will be considered to be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful during the pendency of the fuel allocation program. The Board proposed a substantial increase in the denied boarding compensation to "... provide the carriers with an incentive to minimize denied boardings due to overbooking or other causes."
6/10/74	Initial Decision Docket 26253	The Initial Decision of then Associate Chief Administrative Law Judge Robert L. Park, found that the present tariff rules, regulations and practices of the carriers are not unlawful. Judge Park also found that the public interest requires a stand-by or contingent no-show control plan with certain ingredients to be implemented by the Board under certain circumstances. Judge Park suggested the need for carrier discussions before promulgation of the plan.
8/13/74	ER 880	CAB extended coverage of Part 250 to include foreign air carriers.

Date	CAB Order/ CAB Reports	Description
10/29/74	ER 890	CAB, in response to requests by numerous foreign air carriers deferred extension of denied boarding rule.
1/27/75	ER 897	CAB rendered interpretative amendment and partial stay of the extension of Part 250 to foreign air carriers.
7/11/75	75-7-54 Docket 26253	CAB notes decision of Court of Appeals in *Nader* case and requests views of any party with respect to what action the Board should take and the procedures it should follow in the pending *Emergency Reservations Practices Investigation* as a result of the remand.